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Supreme Court of the United States,

OCTOBER TERM, 1903.

No. 64.

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Clerk

THE ANGLO AMERICAN PROVISION COMPANY,
Plaintiff-in-Error,

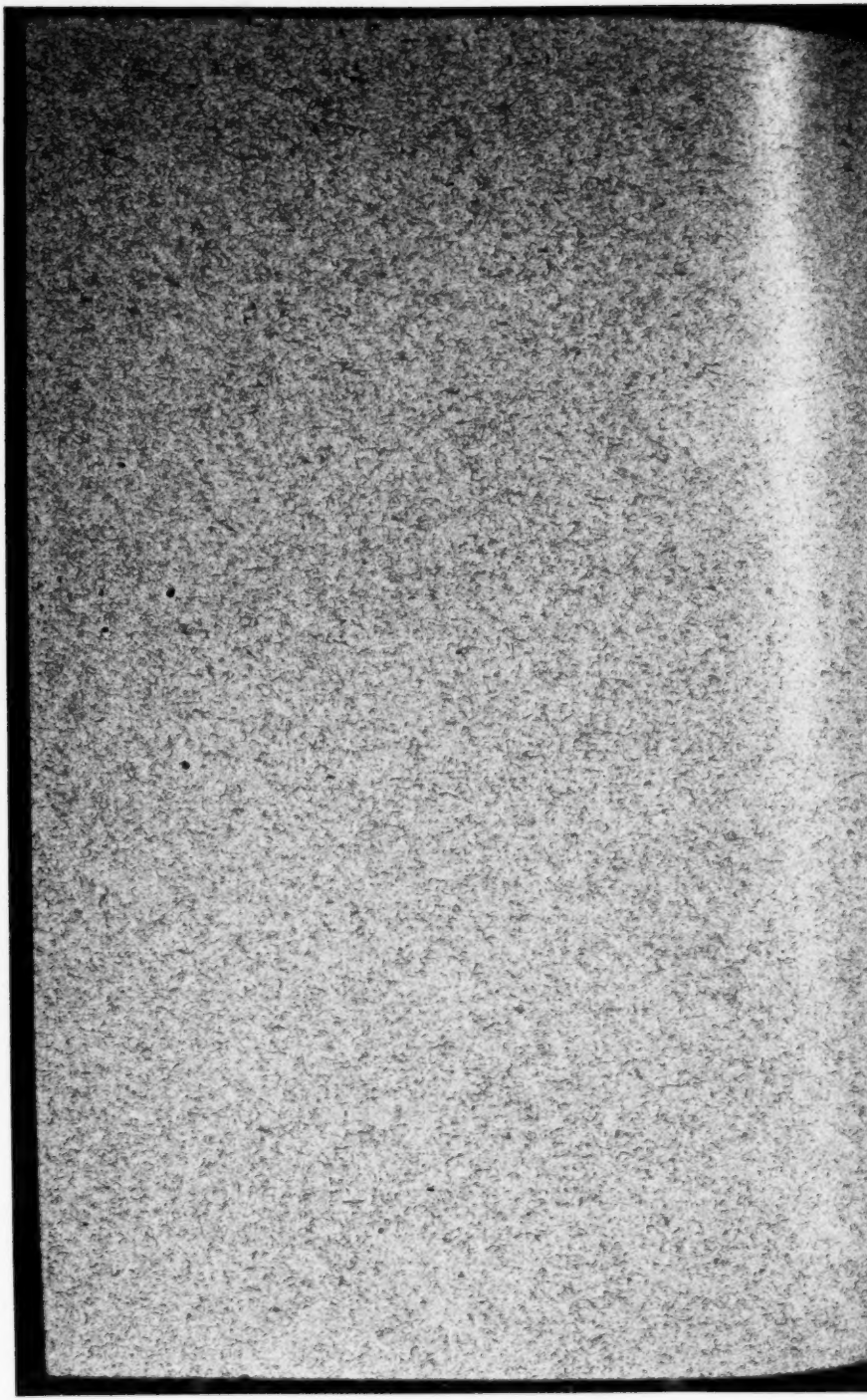
vs.

DAVIS PROVISION COMPANY,
Defendant-in-Error.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF AND ARGUMENT ON THE PART OF THE PLAINTIFF-IN-ERROR.

HENRY WILSON BRIDGES,
Counsel for Complainant.



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Statement of Cause.

This is an action originally brought in the Supreme Court in the State of New York (Transcript, p. 2). The complaint for a cause of action, seeks to establish a judgment obtained in the Circuit Court of Cook County, State of Illinois, in January, 1899, in a suit between this plaintiff and defendant, both corporations organized under the laws of that State (Transcript, p. 2).

Defendant demurred to the complaint on several grounds (Transcript, pp. 3-4), but they are all covered by the fifth paragraph, which states, "that the action is not brought for any of the causes of action specified in Section 1,780 of the Code of Civil Procedure."

This section provides as follows:

* * * * "An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only.

1. .....

2. .....

3. Where the cause of action arose within the State."

The demurrer was sustained in the first instance at Special Term (Transcript, p. 5). This decision was affirmed by the Appellate Division of the Supreme Court in an opinion handed down by Mr. Justice O'Brien (Transcript, pp. 6–7), and this judgment was in turn affirmed by the Court of Appeals in an opinion handed down by Mr. Justice Gray (Transcript, pp. 11–15). The case comes before this Court on writ of error (Transcript, pp. 15–16) addressed to the Court of Appeals of the State of New York and allowed by the Chief Judge thereof.

Specification of Errors.

Errors are duly assigned in the record (Transcript, pp. 17-18). They may be summed up in one proposition, viz.:

The Court erred in holding that the State of New York has power to pass a law which will prohibit a foreign corporation from bringing in

that State an action to enforce a judgment lawfully obtained in a foreign State on a personal appearance on behalf of defendant, such right being guaranteed to the foreign corporation by Art. 4, Sec. 1, of the U. S. Constitution, which provides that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

Argument.

1st. The results of this decision will if followed be most pernicious and violative of the plain intent of the framers of the Constitution.

2nd. The Courts below base their disregard of Art. 4, Sec. 1 of the Constitution on authorities which have no bearing whatever on this case.

3rd. Both Courts have completely ignored the case cited to them, and urged by counsel as determining this case.

4th. Both Courts are at variance with the decision of the U. S. Circuit Court in this very litigation.

5th. The decision also violates the commercial clause of the Constitution.

I.

The results of this decision will if followed be most pernicious and violative of the plain intent of the framers of the Constitution.

As stated above, this action is one brought to establish in the State of New York a judgment ob-

tained in the State of Illinois by a corporation organized under the laws of the latter.

While what follows is not contained in the transcript in this case, it is all a matter of which the Court can take judicial notice, being comprised entirely in decrees of Courts of Record.

The defendant in this case is totally insolvent, and has but one asset, namely, a judgment against the plaintiff herein obtained in the Courts of New York State, on the ground that the contract sued on was made within that state. This judgment has been affirmed by the Court of Appeals, and execution is now in the hands of the sheriff.

Davis Provision Co. v. Fowler Bros. Lim. 163 N. Y., 580.

This execution has been enjoined by the Circuit Court of the United States.

The Court held in the above case that Fowler Bros. Lim., and the Anglo-Am. Pr. Co., were indentical in fact and interest.

It is apparent that our object in bringing this action in the State Courts was that after judgment was entered hereon, we might be able to obtain a decree of set-off of one judgment against the other.

The question before the Court is one of the gravest import, for in its ultimate analysis it means, if the decision of the highest Court of the State of New York is correct, that *every corporation in this country organized outside of New York State can by moving its assets into that state protect itself from the just claims of all foreign corporate creditors.* In order to justify such a conclusion it would seem an essential premise that a corporation is never entitled to the protection of our Constitution. This, of course, is not the case.

While the principle involved is a most important one, the point at issue can be very simply and

concisely stated. It is this: *Is a corporation such a party as is entitled to claim the protection of Article 4, Sec. 1 of the United States Constitution?* The Courts below have held that it is not, and it is in this respect that we claim they have erred.

In taking up this question we will discuss it under three different headings:

A. What was the intention of the founders of the Constitution in establishing this section.

B. What principles govern in the application to corporations of certain sections of the Constitution and their exclusion under others.

C. Do the reasons for which it is held corporations are entitled to the protection of certain sections of the Constitution apply equally to this section.

A.

What was the intention of the founders of the Constitution in establishing this section.

There can be no doubt that the purpose of the founders of the Constitution was to do exactly what the terms of the Constitution would imply, namely, to give "*full faith and credit in each state to the public acts, records and judicial proceedings of every other state.*"

By the Act of the 26th May, 1790, Chap. XI, Congress in accordance with the terms of the Constitution provided for the mode of authenticating the records and judicial proceedings of the State Courts, and then further declared that "the re-

cords and judicial proceedings authenticated as aforesaid shall have such faith and credit given to them in every Court within the United States *as they have by law or usage in the Courts of the state from which the said records are or shall be taken.*"

From another contemporary source of interpretation we find that the purpose of this section of the Constitution was to prevent the very thing which is made possible by this decision of the New York Court. The language of the Federalist in regard to this section is as follows: "The power here established may be rendered a very convenient instrument of justice, and be particularly beneficial on the borders of contiguous states, where effects liable to justice may be suddenly and secretly translated, at any stage of the process, within a foreign jurisdiction" (Federalist, Vol. XLII).

It would thus seem that it was the express intention of the Constitution to give the most ubiquitous effect to the public acts, records and judicial proceedings of the various states.

It is argued by the Court below (transcript, p. 14) that "A general view of the constitutional provision would make its purpose appear to be to introduce uniformity in the rules of proof;" and that for this reason the Court is not bound to give any faith or credit to this Illinois judgment. It would seem that this very line of argument was urged upon the Court in one of the earliest cases before it, for the opinion of Mr. Justice Story in the case of Mills v. Duryee contains the following passage:

> "It is argued that this act provides only for the admission of such records *as evidence*, but does not declare *the effect* of such evidence when admitted. This argument cannot be supported. The act declares that

the record duly authenticated shall have *such faith and credit as it has in the state Court from whence it is taken.* If in such Court it has the faith and credit of evidence of the highest nature, viz. *record evidence*, it must have the same faith and credit in every other Court. Congress have, therefore, declared the *effect* of the record by declaring what faith and credit shall be given to it."

Mills v. Duryee, 7 Cranch., 484.

There is only one exception apparently to this broad general rule, and that is that the states are not compelled to give force and effect within their jurisdiction to judgments obtained in another state on the ground of penalty. The reason for this exception is obvious. As stated by Chief Justice Marshall: "The Courts of no country execute the penal laws of another" (The Antelope, 10 Wheat., 66, 123). *Every exception, cited to the general rule, contained in the opinions of the Courts below and on briefs of counsel has been of this nature, namely, an attempt to enforce judgments obtained under penal statutes* under this provision of the Constitution; and it having always been held that penal statutes are outside the reason for the law, naturally they have not been enforced. Our action is not for the enforcement of a judgment recovered on a penalty, and it has never been claimed that it was.

B.

What principles govern in the application to corporations of certain sections of the constitution and their exclusion under others?

There can be no question "but that corporations in many respects differ in their nature essentially from private individuals. They have thus been held not to be entitled to the benefit of and protection under certain clauses of the Constitution, as, for example, Art. IV, Sec. 2, which provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

On the other hand, they have been expressly held to be entitled to invoke the protection of the clause against the inviolability of contract, and have also been held to be included in the term "persons" under the Fourteenth Amendment.

> Pembina Mining Co. v. Pennsylvania, 125 U. S., 189.

What is the basis of distinction? It is indeed a most rational one, and has been distinctly set forth by this Court. In the construction of statutes, "*corporations are to be deemed and considered as persons, when the circumstances in which they are placed are identical with those of natural persons, expressly included in such statutes.*"

> Beaston v. Farmers' Bank, 12 Peters, 134.

Under Art. IV, Sec. 2, corporations could not be considered as placed in identical circumstances

with individuals, for, as was said by Chief Justice Taney in Bank of Augusta v. Earle:

> "If it were held to embrace contracts, and that the members of a corporation were to be regarded as individuals carrying on business in their corporate name, and therefore entitled to the privileges of citizens in matters of contract, it is very clear that they must at the same time take upon themselves the liabilities of citizens, and be bound by their contracts in like manner. The result of this would be to make a corporation a mere partnership in business, in which each stockholder would be liable to the whole extent of his property for the debts of the corporation; and he might be sued for them, in any state in which he might happen to be found."

Bank of Augusta v. Earle, 13 Peters, 586.

C.

Do the reasons for which it is held corporations are entitled to the protection of certain sections of the constitution apply equally to this section?

Are the circumstances in which this plaintiff corporation is placed identical with those of a natural person? If they are not, certainly the distinction has never been pointed out by defendant in error or by the Courts below.

In what respect does a corporation seeking to enforce a judgment of a sister state differ from a private individual?

As far as the language of the Constitution is concerned it applies as much to corporations as to natural persons. There is nothing in the

meaning or language of this section which would differentiate it from the commercial clause of the Constitution in so far as its applicability to corporations is concerned.

In discussing the question as to whether the latter section of the Constitution applied to corporations, the Court has said:

> "We proceed to the second objection urged to the validity of the Virginia statute, which is founded upon the commercial clause of the Constitution. It is undoubtedly true, as stated by counsel, that the power conferred upon Congress to regulate commerce includes as well commerce carried on by corporations as commerce carried on by individuals * * * *The language of the grant makes no reference to the instrumentalities by which commerce may be carried on; it is general, and includes alike commerce by individuals, partnerships, associations and corporations.*"

Paul v. Virginia, 8 Wallace, 182.

II.

The courts below base their disregard of Art. 4, Sec. 1 of the Constitution on authorities which have absolutely no bearing on the case.

This case has passed through three different Courts, two of which have written opinions thereon. It is noticeable, however, that in reviewing the decision of the Appellate Division, the Court of Appeals has completely ignored the only case which the lower Court pronounced "analogous" to this case, namely, Chemung Canal Bank v. Lowery, 93 U. S., 72, and has selected different

authorities on which to base its disregard of Art. 4, Sec. 1 of the Constitution.

The Appellate Division of the Supreme Court in its opinion uses the following language (Transcript, p. 7):

> "Nor do we think that there is force in the "further contention that Section 1780 of the "Code is unconstitutional as violative of the "provision of the United States Constitution "that 'full faith and credit shall be given in "'each state to the public acts, records and "'judicial proceedings of every other state.' "The present case is analogous to that of "Chemung Canal Bank v. Lowery (93 U. S., "72), where a state Statute of Limitations was "attacked as repugnant to the same clause of "the Constitution of the United States as is "here brought before us, and it was held that "the law in question did not produce any un-"constitutional discrimination."

ON REFERENCE TO THE CASE CITED IT WILL BE SEEN THAT THIS CLAUSE OF THE CONSTITUTION WAS NEVER MENTIONED, NOR DOES THE CASE BEAR THE SLIGHTEST ANALOGY TO THE CASE BEFORE THEM.

In the Chemung case, the decision was to the effect that a state statute, providing that when a defendant is out of the state the Statute of Limitation shall not run against a resident plaintiff, but shall run against a non-resident plaintiff, is not repugnant to the second section of the fourth article of the Constitution of the United States, which declares that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

The reason for the decision is obvious. It is the duty of the debtor to seek the creditor and pay at the place of his (the creditor's) residence. But, in

the language of the Court, "if the statute does not run, as between non-resident creditors and their debtors, it might often happen that a right of action would be extinguished, perhaps for years in the state where the parties reside, and yet, if the defendant should be found in Wisconsin—it may be only in a railroad train—a suit could be sprung on him after the claim had been forgotten."

Where is the analogy?

Our judgment has not been outlawed in the state where obtained, and we do not claim the protection of the clause of the Constitution cited. No one disputes that our judgment is "valid" (Transcript, p. 12). *It was obtained on appearance, and is enforceable in the State where obtained*, and our contention is that this has always been held to be all that is necessary to entitle us to the protection of the clause we do invoke. Indeed, this Court has said:

> "*We can perceive no rational interpretation of the act of Congress, unless it declares a judgment conclusive when a Court of the particular State where it was rendered would pronounce the same decision.*"
>
> *Mills v. Duryee, 7 Cranch., 485.*
> *Christmass v. Russell, 5 Wall., 290.*
> *Mutual Life Ins. Co. v. Harris, 97 U. S., 331.*

On the other hand, the Court of Appeals puts itself squarely on record as follows:

> "As to the power of the State to prescribe arbitrarily or from policy limitations and conditions upon the exercise by foreign corporations of corporate rights, I suppose there to be no doubt, whether they be upon the right to do

business here *or upon the right to sue in our Courts*" (Transcript, p. 13).

Each one of the cases cited by the Court does sustain the first part of their proposition, namely, that the State has a right to prescribe limitations and conditions upon the exercise by foreign corporations of the privilege of doing business within the State: but the cases have absolutely no bearing whatever upon the second part of the proposition, namely, *the right to sue in the Courts*, which is all that relates to the case before them.

We admit that the first part of the proposition of the Court of Appeals is in a limited sense correct, but that is not our case. We have not come into the State for any such purpose. WE ARE NOT SEEKING TO DO BUSINESS HERE BUT SIMPLY TO ENFORCE A RIGHT GUARANTEED TO US BY THE CONSTITUTION. WE ARE BEFORE THE COURTS OF NEW YORK STATE NOT BECAUSE WE WISH TO BE, BUT BECAUSE WE HAVE A JUDGMENT ABSOLUTELY USELESS IN ANY OTHER JURISDICTION. Indeed, as an abstract proposition even the first part of the Court of Appeals' statement goes too far, for the State cannot prescribe arbitrarily limitations and conditions upon the exercise by a foreign corporation of corporate rights, provided the business carried on by that foregin corporation relates to interstate commerce. The Court has always been most careful to restrict its decrees in these cases, relating to the constitutionality of State Statutes strictly to the facts before it. Indeed, Chief Justice Taney had said in the case so much relied on and quoted by the Court of Appeals, namely, Bank of Augusta vs. Earle, 13 Peters, 597.

> "Nor do we mean to say whether there may not be some rights under the Constitution of the United States, which a corporation might claim under peculiar circumstances, in

a State other than that in which it was chartered."

We submit that this is one of those rights.

While the Court of Appeals does not claim that the State statutes, sustained in the decisions on which it relies, were attacked on the ground of being violative of Sec. 1, Art. 4 of the Constitution, it seems to think, however, that because these cases did pronounce valid certain State statutes restricting the rights of foreign corporations on the ground that the said statutes did not violate Art 4, Sec. 2 of the Constitution, that therefore they are authoritative in this case. How can this be so? We do not claim that the New York State statute violates Sec. 2, Art. 4, of the Constitution, and we have disavowed claiming, both by brief and orally, that a corporation is a *citizen* within the meaning of Art. 4, Sec. 2. How then can these cases be held authoritative against the proposition that *Sec. 1780 of the Code of Civil Procedure of New York State*, as interpreted, violates Sec. 1, Art. IV of the Federal Constitution?

III.

Both Courts below have completely ignored the case cited to them, and urged by counsel as determining this case.

It has been held by this Court that a statute of the State of Mississippi, which provided that no action should be maintained in that State on a foreign judgment against a resident·

"In any case where the cause of action

> would have been barred by any act of limitation of that State (Miss)., if such suit had been brought therein,"

was unconstitutional.

Christmas v. Russell, 5 Wallace, 290.

In other words, the State of Mississippi by passing a ridiculous statute of limitations was not to be enabled to invalidate any foreign judgment that it should see fit so to do.

It is just this that the decision of the New York Court has done. It says, you have a judgment perfectly valid in Illinois, to be sure, but it does not avail here, because you are a foreign corporation and our statute does not allow you to come in. We admit that we have been unable to find a case where both plaintiff and defendant were foreign corporations; but what possible difference can a matter of parties make when the rule of law is absolutely unregardful of the parties, except as to the matter of service, and refers, in express terms and language, simply to the judgment itself?

IV.

Both Courts are at variance with the decree of the U. S. Circuit Court in this very litigation.

As stated above, execution, in the hands of the Sheriff of New York County in the case of *Davis Pro. Co. v. Fowler Bros. Lim.*, has been stayed by the U. S. Circuit Court. After two vain attempts to obtain a stay pending appeal, plaintiff instituted an action in the United States Circuit Court in Equity, alleging the facts of the Illinois

and New York judgments, the attempt to establish the Illinois judgment, defendant's demurrer to our complaint in this action, the decision of the Appellate Division, and asked as relief an injunction against the Sheriff of New York County, and the privilege to set off directly the Illionis judgment against the New York judgment, on the ground that the New York statute, as interpreted by the Appellate Division, had deprived us of a right secured to us by the Constitution, and that we were, therefore, entitled to a remedy in the Circuit Court of the United States under the *Civil Rights Statute.*

To this bill also defendants demurred, and their demurrer was overruled.

Anglo Am. Prov. Co. v. Davis Prov. Co.,
105 Fed. Rep., 536.

From this decision defendant did not appeal, but answered.

It is a judgment on the merits in that case which comes before the Court to be heard at the same time herewith.

IT IS APPARENT, THEREFORE, THAT IN THIS VERY ACTION DIAMETRICALLY OPPOSITE CONCLUSIONS HAVE BEEN REACHED IN THE STATE COURTS AND IN THE UNITED STATES COURT. WE SUBMIT THAT THE UNITED STATES COURT IS RIGHT, AND THE STATE COURTS ARE WRONG ON ALL VALID PRECEDENT.

Under ordinary circumstances it is perfectly reasonable that a State Court should take cognizance of actions between non-residents and foreign corporations only when the cause arises in the State.

The New York Courts are maintained by the residents and citizens of that State, and there is no

reason why their time should be taken up in deciding questions which arise between two California corporations over transactions occurring in the latter State. How different, however, is it when the California corporations have had recourse to their own Courts, have fought out the matter at issue betwen themselves and reduced the same to judgment.

In order to prevent the defeated corporation from moving its assets into another State, and enjoying absolute immunity as this iniquitous decision would allow them to do, the United States Constitution provides that such a judgment shall be enforced.

It would indeed be difficult for the defendant in error to answer the statement made by Judge Wheeler in the case of the Anglo American Provision Co. v. The Davis Provision Company (*supra*), when he says "full faith and credit to the Illinois judgment is not only not given to the plaintiff in New York, but the plaintiff is deprived of the right, by being deprived of the right to sue, to have any faith or credit whatever given there to that judgment."

V.

This decision also violates the commercial clause of the Constitution.

This objection is not taken in the assignment of errors but "the Court, at its option may notice a plain error not assigned or specified" (Rule 21).

It has been held that a "statute cannot be construed to impose upon a foreign corporation limitations of its right to make contracts

in the State for carrying on commerce between the States, for that would make the act an invasion of the exclusive right of Congress to regulate commerce among the several States."

Cooper Mfg. Co. v. Ferguson, 113 U. S., 734.

Does not the construction placed upon Section 1780 of the Code "impose upon a foreign corporation limitations of its right to make contracts for carrying on commerce between the States?" How can it be held that while a State statute cannot prevent a foreign corporation from contracting to carry the goods of another foreign corporation to a given place within the State, that it could forbid the first corporation from enforcing its rights against the second by action and levy on the goods themselves?

We submit that there was error in the judgment and pray that it be reversed and the cause remanded.

Respectfully submitted,

HENRY WILSON BRIDGES,
Counsel for Complainant.

[1973]